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The Planning Inspectorate

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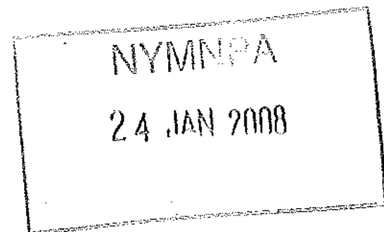
Mrs F Farnell
North York Moors National Park
Authority
Development Control Support
Officer
The Old Vicarage
Bondgate
Helmsley
York
YO6 5BP

Your Ref: NYM/2007/0146/FL
Our Ref: APP/W9500/A/07/2056979/WF
Date: 24 January 2008


NYMNPA
24 JAN 2008

Dear Mrs Farnell

Town and Country Planning Act 1990
Appeal by Mr S Wordsworth
Site at Sledgates, Fylingthorpe, Whitby, YO22 4TZ

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: complaints@pins.gsi.gov.uk

Yours sincerely

Tom Conneely

COVERDL1

You can now use the Internet to submit and view documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -
http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp
You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button

The Planning Inspectorate

An Executive Agency in the Department for Communities and Local Government and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions and advertisement appeals.). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" – In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land -other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Contacting us

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E-mail: wales@pins.gsi.gov.uk

The Parliamentary Ombudsman
Office of the Parliamentary
Commissioner for Administration
Millbank Tower, Millbank
London, SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail:
phso.enquiries@ombudsman.org.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Further information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Council on tribunals

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: http://www.council-on-tribunals.gov.uk/. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

The Planning Inspectorate

An Executive Agency in the Department for Communities & Local Government and the National Assembly for Wales

Our Complaints Procedures

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms. We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. Minor slips and errors may be corrected under Section 56 of the Planning & Compulsory Purchase Act 2004 provided we are notified within the relevant High Court challenge period, but we cannot amend or change in any way the substance of an Inspector's decision.

Who checks our work?

The Government has said that 99% of our decisions should be free from error.

An independent body called the Advisory Panel on Standards (APOS) monitors this and regularly examines the way we deal with complaints. We must satisfy it that our procedures are fair, thorough and prompt.

Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. It can investigate and has discretionary powers to take action if a condition is being ignored.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us'). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.communities.gov.uk

Contacting us

Complaints and Queries

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E-mail: wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman
Millbank Tower, Millbank
London, SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail:
phso.enquiries@ombudsman.org.uk

Appeal Decision

Site visit made on 14 January 2008

by Wenda Fabian BA Dip Arch RIBA IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

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Decision date: 24 January 2008

Appeal Ref: APP/W9500/A/07/2056979
Sledgates, Fylingthorpe, North Yorkshire YO22 4TZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr S Wordsworth against the decision of North York Moors National Park.
- The application Ref NYM/2007/0146/FL, dated 15 February 2007, was refused by notice dated 5 April 2007.
- The development proposed is the erection of 2 No detached houses with garages and formation of a new access.

Decision

1. I dismiss the appeal.

Main issue

2. The main issue is the effect of the proposal on highway safety.

Reasons

3. The appeal site is part of a field alongside the Sledgates road through Fylingthorpe, a settlement where saved policy H1 of the *North York Moors Local Plan* (LP) allows infill development of one or two houses to meet local need. The proposal is for two large detached houses with garages and turning spaces to the rear. As the site lies between and opposite existing houses and within the settlement limit, the Park Authority has raised no objection to either the principle of residential development on the site, subject to a local occupancy condition, or to the design and layout of the proposed houses and I see none.

4. There is local concern over the visual effect on the existing hedge and the stone-faced earth and grass bank, which enclose the front of the site and are characteristic of the area. The bank would remain in place, cut through only for the new access, but the hedge above it would be removed along the whole frontage and a new hedge planted around 2.5m back from the current position, to provide better visibility for vehicles leaving the site. The existing field hedge would be lost. However, at my visit this had already been reduced in height to within around 0.6m from the bank and did not appear of significant maturity. No statutory protection for the hedge has been drawn to my attention and with a good standard of replacement planting as proposed (which could be ensured by a condition) its loss would not be an over-riding objection to the appeal.

5. The existing field access at the northwest corner of the site would be closed and a new shared access to serve both the two proposed dwellings and the

field behind would be formed close to it. The main issue in dispute is what visibility standard should apply for vehicles exiting the appeal site from the proposed access. Saved LP policy GP3 requires development proposals to provide means of access to the highway network in line with standards adopted by the National Park Authority. The North Yorkshire County Council Highway Authority considers that there should be a splay of 2 x 70m in both directions. It derives this standard from those in its own *Residential Design Guide*, which are the same as those set out in the *Design Manual for Roads and Bridges*[1] (DMRB). However, these standards primarily apply to the trunk road network.

6. The *Manual for Streets*[2] (MfS), 2007, supersedes *Design Bulletin 32* and its companion guide *Places, Streets and Movement*, which have now been withdrawn. MfS focuses on lightly-trafficked residential streets, but many of its key principles can be applied to other types of street, for example high streets and lightly-trafficked lanes in rural areas. It does not apply to the trunk road network, the design requirements for which are set out in the DMRB. It aims to promote the better design of streets, as places lined by buildings and public spaces, where the movement of vehicles is only one key function of several and where 'place' is the most important function; essentially, this is what distinguishes a street from a road. It clarifies that the classification of streets needs to be considered across built-up areas including rural towns and villages.

7. The Sledgates, a C classified road, passes through Fylingthorpe and is the secondary approach into nearby Robin Hood's Bay (a key tourist attraction in the area) from the A171; the main approach is via the B1447. The traffic flow on it has been recorded as 1000 vehicles per day, according to the appellant it is 200 vehicles per hour in the summer. Although the appeal site is at the edge of the settlement, visually it is within it; it lies opposite a row of close-set semi-detached houses and is between more well spaced larger detached houses and bungalows, with a paved and kerbed footway along its frontage on this side. The road has standard street lights. From the definitions set out above I consider that it is of the type intended to fall within the standards referred to in MfS.

8. Visibility splays at the kerbline of 2.4 x 56.4m (2 x 56.6m) to the northeast, downhill from the access, and 2 x 24.5m (2 x 60.7m to the centre line of the road) to the southwest, uphill are proposed. The Highway Authority has accepted that these are achievable and would provide views at a driver's eyeline above the existing bank. MfS sets out, at table 7.1 a stopping sight distance (SSD), adjusted for car bonnet length, of 43m at 30 miles per hour and the visibility splays proposed would achieve this to the northeast, but would fall substantially short to the southwest, in the uphill direction.

9. Sledgates descends steeply from the A171and there are tight bends, with a gradient of 25%, about 300m from the southeast end of the appeal site, which slow traffic down substantially. However, I have seen that traffic from this direction speeds up as the road reduces in gradient and straightens before the appeal site. Although the 30mph speed restriction for the village commences about 120m to the southeast of the site, a traffic speed survey, carried out by the Highway Authority in 2007, recorded 85th percentile speeds downhill at this

[1] Issued by the Department for Transport
[2] Issued by the Departments for Transport and Communities and Local Government

point of 38mph. The MfS indicates a 59m adjusted SSD for speeds of 37mph – more than twice the distance achievable in this direction.

10. I realise that, measured to the centre line of the road, the splay would be substantially better (2.4 x 40 or 2 x 60.7m) but MfS is clear that centre line measurements should only apply where there is a special circumstance such as a physical barrier to prevent cars crossing into the other lane. In this case there is informal paving for cars to park along the roadside in front of the houses opposite and the verge leading to this is also worn where cars are parked there. I saw that, despite the generous overall road width at this point and centre-line marking, these parked cars oblige vehicles approaching the site from the southwest to pull out, partly across the centre-line of the road. I, therefore, consider this alternative measurement inappropriate in this case.

11. I note the appellant's contention that speeds on this stretch are less than those recorded and that the Authority did not indicate whether the recorded speeds were measured during wet or dry weather. However, the appellant has not provided alternative survey information. Nevertheless, taking the lower speed suggested of 34mph (adjusted for wet weather) an interpolated SSD of 48m would be required. Even setting the design speed for the access as the 30mph speed limit, the proposed access would substantially fail to provide the 43m SSD recommended by the recently reduced standards. According to MfS, the 24.5m distance proposed would be suitable for traffic travelling at less than 22mph. Whilst MfS promotes a flexible application of standards where these are difficult to achieve, it expects other measures to be introduced to justify a reduction. It seems to me that without additional measures to improve visibility in this direction from the site, or reduce the speed of traffic passing it, the proposal would significantly compromise highway safety.

12. I have read that the Highway Authority may be installing traffic calming measures in the vicinity of the site and if implemented these may change the design speed for the proposed access. However, apart from yellow bordered chevron signs to highlight the bends described above I saw few other measures to slow traffic and in the absence of a detailed scheme, with anticipated design speeds and an implementation programme I have reached my decision on the basis of the current circumstances. No accident injuries have been recorded in relation to this stretch of highway. Nevertheless, this is not sufficient justification to set aside the recently significantly reduced nationally recommended design standards for this type of road access.

13. I conclude that the proposal would harm highway safety, contrary to national and local policy.

Wenda Fabian

Inspector